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2015 JAN 26 PM 1:49

IDAHO PUBLIC  
UTILITIES COMMISSION

**DECISION MEMORANDUM**

**TO: COMMISSIONER KJELLANDER  
COMMISSIONER RAPER  
COMMISSIONER ANDERSON  
COMMISSION SECRETARY  
LEGAL  
WORKING FILE**

**FROM: DANIEL KLEIN** *AVU-E-16-02*

**DATE: JANUARY 22, 2016**

**RE: FORMAL COMPLAINT OF "YOUR EQUITY SOURCE, YES  
MORTGAGE" AGAINST AVISTA**

On January 8, 2016, the Commission received a "formal" complaint (Attachment A) from Mel E. Wach, owner of Your Equity Source, Yes Mortgage (Yes Mortgage) against Avista Utilities. Yes Mortgage shares a building with another tenant and electric service for each tenant was separately metered by Avista. Unbeknownst to Avista and Mr. Wach, the service meter for Mr. Wach's property was measuring usage for the other tenant, and vice versa. Yes Mortgage was billed for the other tenant's usage for over seven years due to the misidentification of meters. Avista issued a credit covering three years, but Mr. Wach is requesting a refund for the additional four and a half years. Mr. Wach was unsatisfied with the outcome of the Staff's efforts to informally resolve his complaint (Rule 21-24) and has filed this "formal" complaint pursuant to Rules 24 and 54, IDAPA 31.01.01.024 and .054.

**BACKGROUND**

Last fall, Mr. Wach noticed that his electric bill decreased considerably when the business tenant next door moved out of the adjacent suite. On October 16, 2015, he contacted Avista to ask that the meters be checked. According to Mr. Wach, it took Avista two on-site visits to determine that Suite A and Suite B's meters were switched. Avista compared the usage of Suite A and B and determined that Yes Mortgage had been overbilled. On November 13, 2015, Yes Mortgage received a credit of \$1,866.20 for overbilling dating back to October 2012. This amount represents the difference between the amount previously paid by Yes Mortgage and the amount billed to the other tenant over the three year period.

On November 17, 2015, Mr. Wach filed an informal complaint with the Commission regarding the overbilling. Staff investigated the matter and verified that Avista had correctly calculated the amount overbilled. In addition, Staff determined that Avista had complied with the requirements of Rule 204.02.b of the Commission's Utility Customer Relations Rules (IDAPA 31.21.01). See Attachment B. At the customer's request, Staff made arrangements with Avista to issue a refund check instead of maintaining a large credit balance on Yes Mortgage's account.

In his "formal" complaint, Mr. Wach is asking for full credit back to the time his Company started service at this location. Mr. Wach states that the misidentification of meters was not caused by Yes Mortgage. Furthermore, Mr. Wach maintains that he questioned his usage shortly after moving to the current location in 2008 and contacted the utility. He says the utility sent a technician to the property and assured Mr. Wach that everything was in order. According to Avista, it does have customer records going back to 2008, but there are no notes on the customer's account regarding Mr. Wach contacting the Company in 2008 about this matter.

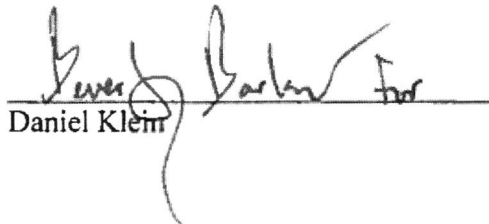
Mr. Wach is also concerned about possible misidentification of the gas meters as well. Avista states that on October 21, 2015, it verified that the gas meters were correctly identified.

#### **STAFF RECOMMENDATION**

Mr. Wach was not satisfied with the outcome of the informal complaint. Consequently, he filed a "formal" complaint. See Rules 23, 25 and 54, IDAPA 31.01.01.023, .024 and .054. Staff recommends that the Commission issue a Summons to Avista Utilities, Inc. and direct the Company to file a response to the complaint.

#### **COMMISSION DECISION**

Does the Commission wish to accept Mr. Wach's formal complaint? Does the Commission wish to issue a Summons to Avista?

  
Daniel Klein

Udmemos/Yes Mortgage Formal Complaint dec memo



Consumers

December 29, 2015

Idaho Public Utilities Commission  
472 W. Washington  
Boise, Idaho 83720-0074  
Attn: Ms. Jean Jewell, Commission Secretary

Idaho Public Utilities Commission  
Office of the Secretary  
RECEIVED

JAN 08 2016

Boise, Idaho

*RE: Avista Utilities / Via USPS Priority Mail*

Dear Ms. Jewell,

I would like to file a formal complaint against Avista Utilities for incorrect billing with respect to our utility bills from the period of April 2008 to August 2015.

Although I realize that the time period for remediation of billing errors is typically 36 months, as detailed in *IDAPA 31.21.01, Section 204* whereby the maximum amount of time a Utility Company may seek restitution from a customer is established for "*Errors in Preparation [of billing statements] - Malfunctions [in equipment] - Failure to Bill*", in this particular situation, there are exigent circumstances that I would like to take this opportunity to address:

1. This is not a situation of a simple billing error, a malfunction in the meter/other equipment, or a failure to bill but rather it is a situation where we have been billed for another company's usage for over seven (7) years.
2. In this situation, after several months of high bills, I contacted Avista in August of 2008 to address my concerns regarding what I considered to be extremely high bills. Avista responded by sending a technician out to investigate the situation and I was assured that everything was in order.
3. In September 2015, the neighboring office, North Idaho Home Health, vacated their office when they moved to another location and our utility bills dramatically decreased. It was obvious that there was an issue and we contacted Avista. Avista came out and once again, advised that there were no issues; the meter and equipment were performing correctly.
4. In October 2015, we AGAIN contacted Avista and asked that they look at this situation further as there was obviously an issue. They scheduled a time to come out and inspect both office suites on October 27, 2015. It was discovered that the two (2) meters were incorrectly registered at Avista whereby our usage was being billed to North Idaho Home Health and their usage was being billed to us. As you will note below, there is a significant difference in not only the office square feet, but in the number of employees; therefore, this error negatively affected us for over seven (7) years.



5. If Avista had properly researched the issue back in 2008 when it was first brought to their attention, this situation could have been resolved back then; therefore, we should not be penalized due to their failure to properly address the situation.

**To further clarify above item #1 and #2:**

Our building is set up as a commercial duplex in the Riverstone Complex and as such has two (2) separate office suites with (2) two separate meters for utilities. The overall building has 4,951 square feet and our particular suite is substantially smaller than the adjacent suite with only 1,468 sq. ft. (or 29.6% of the overall building space) and the adjacent suite has 3,483 sq. ft. (See Exhibit A). To put the space differential in prospective, the adjacent suite, North Idaho Home Health, had a staff of 20-25 people and they were open 7-days a week. Our understanding is that they also held monthly company meetings with sometimes up to 30+ people in attendance.

Our business, Your Equity Source, LLC, has a much smaller staff which consisted of four (4) people from 2008 until 2014 and only five (5) people in 2015. Not only are we not open on weekends, but we were only open ½ days on Fridays.

As mentioned above, the utility bills seemed extremely high for such a small space with limited equipment and employees which is why we asked Avista to research the situation back in 2008. When Avista advised us that everything was correct, we then contacted the owner of the building, MICA CREEK LLC and expressed our concerns. As a result, they had extra insulation put in to see if this would help with the high utility bills. The utility bills never changed and now we can see why since the benefit was likely realized by the neighboring office.

**To further clarify above item #3 and #4:**

In September, 2015 North Idaho Home Health vacated their office suite when they relocated to another location and when we received our October 2015 statement, our average billing went from \$200+/- per month to \$50+/- per month. We again contacted Avista Utilities to express our concerns.

On Thursday, October 22, 2015, they sent their utility personnel out to check the meter. At that time, they again verified that the meters were in working order and once again advised that everything was in order. Basically, it was the same response we received from them in 2008.

I strongly disagreed with their analysis and we once again contacted Avista and expressed our concerns - they scheduled a second inspection for Tuesday, October 27, 2015 whereby the Avista utility personnel conducted a test of the meters in both suites (our suite and the now vacant suite which was formerly occupied by North Idaho Home Health). They instructed us to shut all our electric equipment off prior to their coming out in the morning and upon their arrival and we had our staff member-Amy Adkinson on sight to assist and confirm that the test was actually conducted. They instructed her to stay upstairs in our office while they activated the electrical panel.

It was determined by this physical testing of the meters that in fact, the meter to our business and the business next door to us (North Idaho Home Health) were crossed; thereby, creating a major billing error. We were assured that they would correct the issue and that we would be adjusted for any overpayments.



**In Summary:**

The end result is that we were being billed for North Idaho Home Health's usage for the entire time we occupied our office starting April, 2008. The utility personnel said they would report this to their billing department and request that we be reimbursed for the overages we had been charged.

We received a letter dated November 13, 2015 from Avista Utilities stating that a recent investigation of the electric metering equipment revealed that the meter was mixed with another address. Our account was credited in the amount of \$1,866.20 for 18510 kwhs billed between 10/2/2012 and 8/3/2015. (See attached Exhibit B). There was nothing included to show how they arrived at their calculations and they only went back 36 months.

Although IDAPA 31.21.01, Section 204 and Section 61-642 indicate the timeframe for restitution is 36 months, this appears to be more in line with the maximum amount of time a Utility Company may seek restitution from a customer for "Errors in Preparation [of billing statements] - Malfunctions [in equipment] - Failure to Bill. Not only is this not the case in this situation, but the fact of the matter is that we did bring this to Avista's attention back in 2008 and they did not take the time or the initiative to properly research this situation. They had complete control of the situation with full access to evaluate the meter wiring and the ability to compare the two office suite billing data upon our initial request in 2008. Instead, their only initiative was to check for the functionality of the meter itself.

Since April of 2008, we have paid a total of \$19,219 to Avista which actually represents the adjacent space's billing and as detailed below, their space is 70% of the overall square footage.

It would appear that such problems are not uncommon and State Utility Commissions and Governing officials do have the ability to allow for remediation beyond the typical period established within state statutes.

*For example, in Grace Edwards vs. Connecticut Light and Power, the consumer was awarded restitution for 25 years of overcharges when it was determined that additional items were incorrectly connected to her Meter.*

*As another example, there have been so many such instances in the State of New York whereby consumers were harmed by Utility Company errors that the laws were changed to give consumers the ability to seek restitution for the actual amount of time they were financially harmed. In their statement:*

*Billing errors caused by faulty wire connections, incorrect computations, installation mishaps or other mistakes often continue for years without detection, the bill says. Even when a utility company acknowledges the error and can account for the amount of the mistake, the liability is for [a limited period, according to current state statutes.*

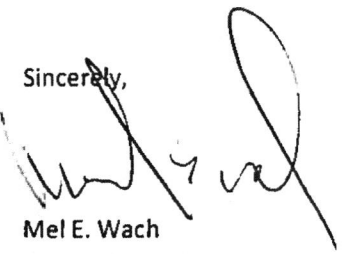
*"This causes an inequitable situation whereby a customer can prove the overcharge for a longer period of time, but cannot be compensated for his total loss," the measure says. "This legislation changes the statute of limitations for these utility company billing errors ..., thereby providing a fairer basis to settle these matters."*

Our request is simple. We have, in good faith, substantially overpaid for our utility services since 2008 when Avista failed to properly research the problem after our initial complaint; therefore, we feel we should not be encumbered by the 36 month period. We are requesting that Avista Utilities make available the actual billing information from April 2008 to December 2015 for our actual usage and we are requesting for the commission to set aside the 36 month review period due to the unique circumstances and require Avista Utilities to promptly refund to us the full amount overpaid. We not requesting interest on the amount due; however, we are requesting that they issue us a refund check instead of a credit on the account.

\*\*\*Also, Avista Utilities bills us not only for the electrical portion of our utilities, but also for the gas portion of our utilities. We have asked for the gas meter to also be checked and thus far, this has not been addressed. We are requesting that Avista check to ensure that the gas meters are not also incorrectly wired.

As a small business owner, I can assure you that keeping every expense in line is critical, especially for a small business in the Mortgage Industry (such as ours) which has endured decreased revenue over the past 10 years due to the real estate market. I appreciate your time and consideration in this matter and should you have any questions or need any additional information, please do not hesitate to contact me.

Sincerely,



Mel E. Wach  
Owner

CC: Daniel Klein, Idaho Utilities Compliance Investigator (via email)  
Raúl Rafael Labrador, Idaho Congressman 1<sup>st</sup> District (hand delivered)

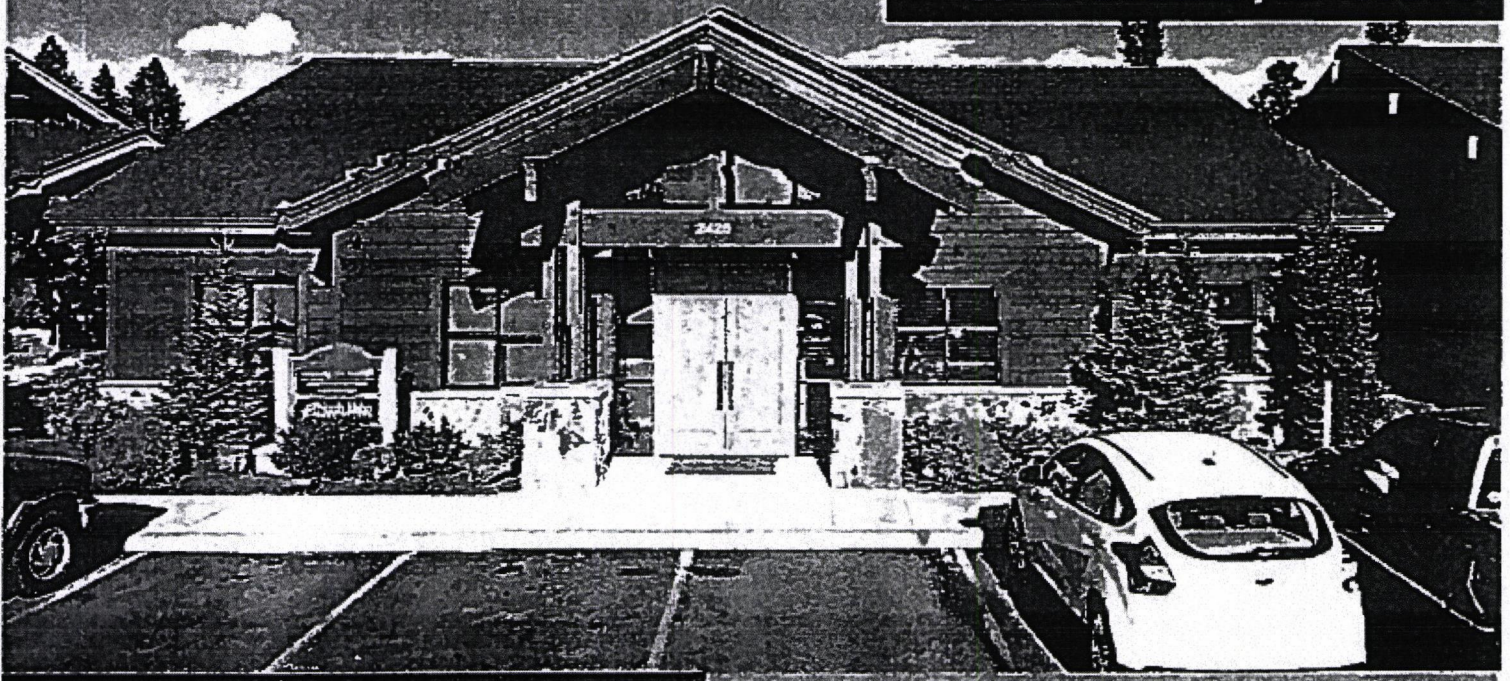
*YOUR EQUITY SOURCE  
YES Mortgage, NMLS #3079  
2426 N. Merritt Creek Loop, Suite A  
Coeur d'Alene, ID 83814  
208-664-9260 PHONE  
208-667-8516 FAX*



# EXHIBIT A

## FOR LEASE

2426 Merritt Creek Loop  
Coeur d'Alene, ID 83814



**SPACE AVAILABLE:**  
Unit B -  $\pm 3,483$  SF

**LEASE RATE:**  
\$3,900 / MO / Modified Gross



$\pm 3,483$  square foot Class A office space  
located in beautiful Merritt Creek Office Park  
with in Riverstone

### PROPERTY DETAILS

- Built-in reception area
- Copy / Supply Room
- Break room
- 4 large private offices
- Large office area for cubicals
- Lower level conference room
- Secured file storage

**Casey Brazil**  
208.770.2595  
casey.brazil@khco.com

**Josh Beebe, SIOR**  
208.699.7980  
josh.beebe@khco.com

**KIEMLE &  
HAGOOD  
COMPANY**

208.770.2590  
khco.com

Attachment A  
Decision Memorandum  
Page 5 of 7

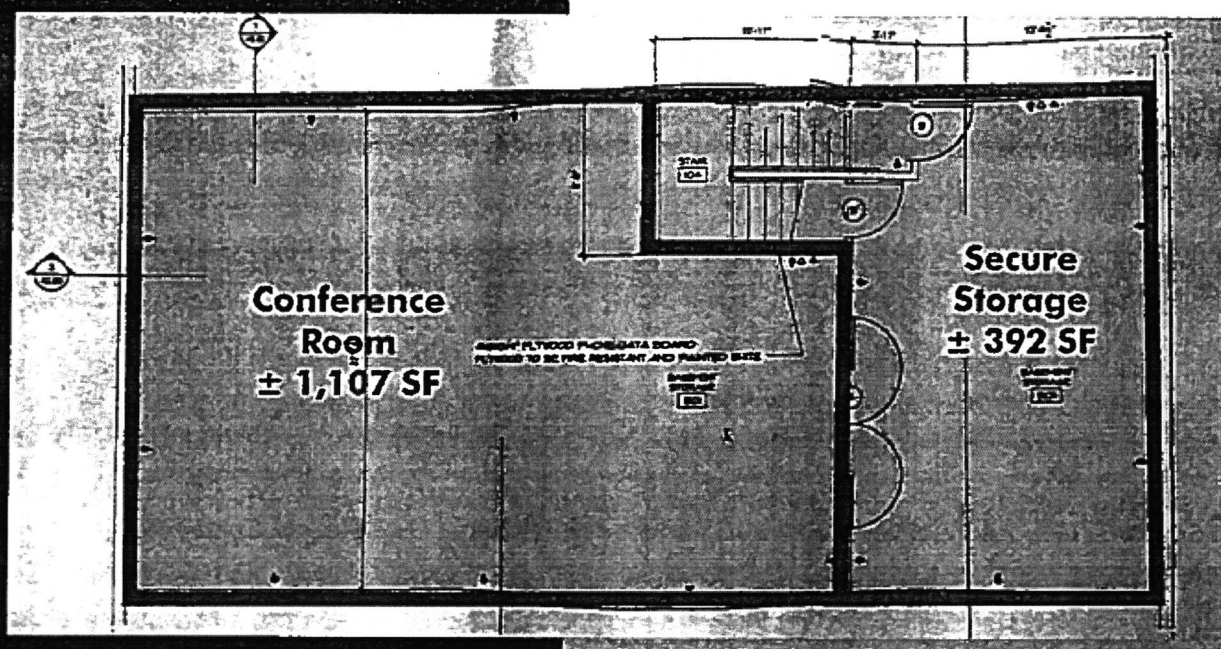
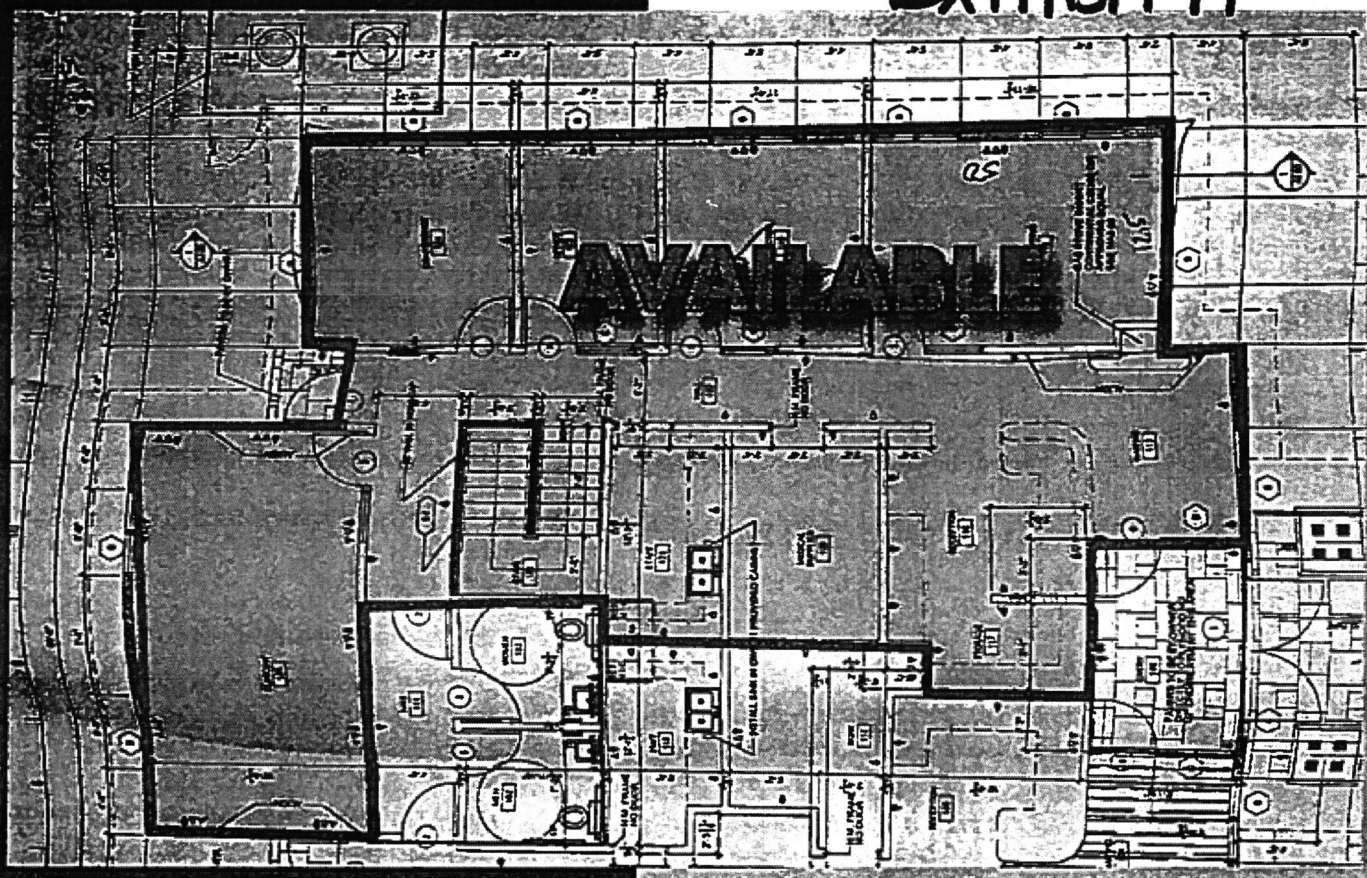


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1 of 2



# EXHIBIT A



FLOOR PLANS MAY NOT BE ACCURATE.  
TENANT OR TENANT'S AGENT TO VERIFY.

**Casey Brazil**  
208.770.2595  
casey.brazil@khco.com

**Josh Beebe, SIOR**  
208.699.7980  
josh.beebe@khco.com

**KIEMLE &  
HAGOOD  
COMPANY**

Attachment A  
Decision Memorandum  
Page 6 of 7

208.770.2590  
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2 of 2

The Avista logo, featuring the word "AVISTA" in a bold, sans-serif font with a stylized graphic element to the right.

1411 East Mission Avenue  
PO Box 3727  
Spokane, WA 99220-3727

# EXHIBIT B

November 13, 2015

Your Equity Source  
2426 N Merritt Creek Loop Ste A  
Coeur d'Alene ID 83814

Re: Account Number 5658810000

Dear Your Equity Source,

A recent investigation of the electric metering equipment at 2426 N Merritt Creek Loop Ste A revealed that the meter was mixed with another address.

We have credited your account \$1866.20 for 18510 kwhs billed between 10/2/2012 and 8/3/2015.

If you have any questions, please contact our office. Avista Customer Service Representatives are available to assist you Monday through Friday 7:00 a.m. to 7:00 p.m. and Saturday 9:00 a.m. to 5:00 p.m. at (800) 227-9187. You can also visit us at [www.avistautilities.com](http://www.avistautilities.com).

Sincerely,

...

They only Credited  
3 years - we've  
been here since  
April 2008 -  
So there should be  
a credit for the other  
4 years.

Also, that's  
only \$51 +/- /mo.  
which is odd since  
they had 20-25  
EMPLOYEES & were  
open 7 days/wk. VS  
5 here in our office.

## UTILITY CUSTOMER RELATIONS RULES IDAPA 31.21.01

### 204. INACCURATELY BILLED SERVICE UNDER CORRECT TARIFF SCHEDULE – FAILURE TO BILL FOR SERVICE (Rule 204).

**01. Errors in Preparation – Malfunctions – Failure to Bill.** Whenever the billing for utility service was not accurately determined for reasons such as a meter malfunctioned or failed, bills were estimated, metering equipment was incorrectly installed or programmed, or bills were inaccurately prepared, the utility shall prepare a corrected billing. If the utility has failed to bill a customer for service, the utility shall prepare a bill for the period during which no bill was provided. (4-2-08)

**02. Rebilling Time Period.** (4-2-08)

a. If the time when the malfunction or error began or the time when the utility began to fail to bill for service cannot be reasonably determined to have occurred within a specific billing period, the corrected billings shall not exceed the most recent six (6) months before the discovery of the malfunction, error, or failure to bill. (4-2-08)

b. If the time when the malfunction, error, or failure to bill began can be reasonably determined and the utility determines the customer was overcharged, the corrected billings shall go back to that time, but not to exceed three (3) years from the time the error or malfunction occurred as provided by Section 61-642, Idaho Code. (4-2-08)

c. If the time when the malfunction or error can be reasonably determined and the utility determines the customer was undercharged, the utility may rebill for a period of six (6) months unless a reasonable person should have known of the inaccurate billing, in which case the rebilling may be extended for a period not to exceed three (3) years. Utilities shall implement procedures designed to monitor and identify customers who have not been billed or who have been inaccurately billed. (4-2-08)

**03. Refunds.** The utility shall promptly prepare a corrected billing indicating the refund due to the customer and issue a credit on the customer's next bill. Any remaining credit balance shall be credited against future bills unless the customer, after notice from the utility, requests a refund. The utility shall advise the customer of the option to have any remaining credit balance refunded to the customer. (4-2-08)

**04. Additional Payments.** The utility shall promptly prepare a corrected billing for a customer who has been undercharged indicating the amount owed to the utility. An unbilled or undercharged customer shall be given the opportunity to make payment arrangements under Rule 313 on the amount due. At the customer's option, the term of the payment arrangement may extend for the length of time that the underbilling accrued or the customer was not billed. (4-2-08)

[Adopted as Rule 8.2 and 8.3, O.N. 17744; amended and recodified, G.O. 177.]

Statutory Reference: *Idaho Code* § 61-642.

Cross-Reference: Rules 005, 203, 313.





January 25, 2016

Idaho Public Utilities Commission  
472 W. Washington  
Boise, Idaho 83720-0074  
Attn: Ms. Jean Jewell, Commission Secretary  
Via email: [jean.jewell@puc.idaho.gov](mailto:jean.jewell@puc.idaho.gov)

Idaho Public Utilities Commission  
Office of the Secretary  
RECEIVED

JAN 25 2016

Boise, Idaho

*RE: Avista Utilities / Via USPS Priority Mail*  
**Addendum to Letter Dated 12-29-2015**

Dear Ms. Jewell,

On December 29, 2015, I submitted to you a letter of complaint against Avista Utilities for erroneously billing us for another company's usage for over seven (7) years.

I would like to take this opportunity to address a portion of my request whereby I asked to see the actual billing information for the usage we should have been paying for the past seven (7) years so that we could determine the actual difference. Last week I did receive this information, as noted below, and as you can see, the difference is substantial:

2008-2015 Amount Paid by YOUR EQUITY SOURCE (This amount was incorrectly billed to us)	\$19,219.00
2008-2015 Amount Billed to adjacent office (This is the actual billing for YOUR EQUITY SOURCE)	<u>\$10,196.06</u>
Amount of <u>overpayment</u> by YOUR EQUITY SOURCE	\$9,022.94

The error created by Avista whereby they billed us for electric usage for another Business created a situation where we were paying 88% more than our actual usage. This may not seem like a large amount; however, as a small business with less than 5 employees, this is a significant difference.

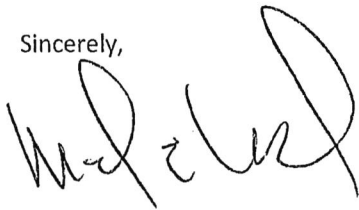
As stated in my previous letter, our request is simple. We have, in good faith, substantially overpaid for our utility services since 2008 when Avista failed to properly research the problem after our initial complaint; therefore, we feel we should not be encumbered by the 36 month period. We are requesting that Avista Utilities promptly refund to us the full amount overpaid (as noted above). We are not requesting interest on

the amount due; however, we are requesting that they issue us a refund check instead of a credit on the account.

\*Also, we have still not had any communication regarding the gas portion of the billing; therefore, we are requesting that Avista research to ensure that the gas meter's are not also incorrectly billed.

I appreciate your time and consideration in this matter and should you have any questions or need any additional information, please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read 'Mel Wach', written in a cursive style.

Mel E. Wach  
Owner

YES Mortgage, NMLS #3079

2426 N. Merritt Creek Loop, Suite A

Coeur d'Alene, ID 83814

208-664-9260 PHONE

208-667-8516 FAX